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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,039	08/29/2006	Robert Dowe	67,173-002	6478
7590	01/22/2009		EXAMINER	
Matthew L Koziarz Carlson Gaskey & Olds 400 W Maple Road Suite 350 Birmingham, MI 48009			PIERCE, WILLIAM M	
			ART UNIT	PAPER NUMBER
			3711	
			MAIL DATE	DELIVERY MODE
			01/22/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/591,039	DOWE, ROBERT	
	<b>Examiner</b>	<b>Art Unit</b>	
	William M. Pierce	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 December 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/16/08</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

This office action replaced the final office action mailed 10/16/08 which failed to address newly added claims 21 and 22.

### ***Claim Rejections - 35 USC § 102***

Claims 1, 2-7 and 11-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Elum 5,566,942 as set forth in the previous office action and below in response to applicant's remarks.

Specifically to claim 21 it recites that the "diagramless grid is free of any pre-indicated spacer squares". Since no special definition is afforded to the term "per-indicated spacer square" from the specification, the broadest reasonable interpretation of the term based on its ordinary meaning has been taken. As such where the grid of Elum is free of any "pre-indicated" markings such as letters, this limitation does not distinguish over him. Likewise with respect to claim 22, what a reference mark is "in a background" is interpreted to be in the shading C (col. 3, ln. 13).

### ***Claim Rejections - 35 USC § 103***

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elum in view of Ferguson 4,65,971 as set forth in the previous office action and below in response to applicant's remarks.

Claims 1, 2, 11-14, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over LiDonnici P. E. (US 2004/0183253) in view of Elum (US 5,566,942) as set forth in the previous office action and below in response to applicant's remarks.

Specifically to claim 21 it recites that the "diagramless grid is free of any pre-indicated spacer squares", such is considered shown by LiDonnici. . Elum teaches the use of a reference mark is "in a background" which is interpreted to be the shading C (col. 3, ln. 13). To have included such in LiDonnici would have been obvious in order to assist a player in solving the puzzle.

Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over LiDonnici P. E. (US 2004/0183253) in view of Elum (US 5,566,942) in view of Harris et al. (US 6,491,300) as set forth in the previous office action and below in response to applicant's remarks.

## ***Conclusion***

Applicant's arguments filed 12/16/08 have been fully considered but they are not persuasive.

Applicant argues that there is a "ascertainable meaning that is recognized in the art of games" with respect to the term "diagramless grid". Applicant makes of record several pieces of non patent literature to support his position. While it is true that diagramless puzzles are known in the art, the term is more general than specific. Using the term in the claims do not import any specific structural limitations that must be adhered to since there are many variations and designs of these such puzzles. Where applicant uses the term "diagramless grid" to describe his claimed invention in itself illustrates the examiner's position since the NPL references used by applicant to define such a term do not mention coordinate markings or reference marks in the background. As such, applicant himself in considering his invention to be a "type" of diagramless puzzle demonstrates that there is no specific structure afforded to these puzzles an that they can take on different designs.

Where applicant argues the combination fo LiDonnici in view of Elum, he remarks (bottom pg. 2) that in Elum "the claimed reference mark does not relate grid locations to one another. This arguement is considered moot since such is not commensurate with the scope of the claim that fail to recite such a limitation. As such this arguement is unpersuasive. The coloring and shading of Elum is a reference mark in the background as called for by the limitations of the instant claims and to have provided such in LiDonnici would have been obvious as clues to help a player in solving the puzzle.

Harris is applied to teach the design of crossword puzzles in general. To use the teaching of Harris to design a crossword puzzle using symmetry would not necessarily require the use of

his black squares. Where applicant has not shown where arranging his reference indicia used to solve the puzzle in a symmetric pattern solves any particular problem or produces any unexpected results, such does not distinguish over the teaching in Harris of designing indicia in crossword puzzles.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Pierce whose telephone number is 571-272-4414 and E-mail address is bill.pierce@USPTO.gov. The examiner can normally be reached on Monday and Friday 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, communication via email at the above address may be found more effective. Where current PTO internet usage policy does not permit an examiner to initiate communication via email, such are at the

discretion of the applicant. However, without a written authorization by applicant in place, the USPTO will not respond via Internet e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122. A paper copy of such correspondence will be placed in the appropriate patent application. The following is a sample authorization form which may be used by applicant:

*"Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me by responding to this inquiry by electronic mail. I understand that a copy of these communications will be made of record in the application file."*

For further assistance examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/William M Pierce/  
Primary Examiner, Art Unit 3711